

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**Board Meeting**  
**September 1, 2011**

Meeting Began At: 3:30 P.M.

Meeting Ended At: 5:01 P.M.

Members Present: Tim Clare, Jayne Snyder, Chris Beutler

**Item 1 - Introductions and Notice of Open Meetings Law Posted by Door**

Chair Snyder opened the meeting with introductions of the Board members. She advised that the open meetings law is in effect and is posted in the back of the room.

**Item 2 – Public Comment and Time Limit Notification**

Snyder stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

**Item 3 – Approval of the minutes from the JPA meeting held July 29, 2011**

Snyder asked for any corrections or changes to the minutes from July 29, 2011. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. Motion carried 3-0.

**Item 4 – Approval of Payment Registers**

Steve Hubka, Interim Finance Director, came forward and explained that the payment registers contain routine expenditures within the budgeted projects. A fair amount of cash is being spent each month as progress is made on preparation of the site.

Clare inquired if Hubka is making sure the required signatures are obtained and the requests for funds are filled out appropriately so that the JPA is in good shape from a financial audit standpoint. Hubka answered that the Controller for the JPA, Mark Leikam, reviews those items in addition to the approval process that goes through Public Works and PC Sports.

Snyder asked for any comments from the public. Jane Kinsey came forward and stated that due to the problems with the construction of the Antelope Valley project, the public is concerned that there may be similar problems due to some of the same contractors are being used. She asked what backup is in place to make sure that won't be the case. Paula Yancey with PC Sports indicated that there is a Request for Proposals out for the above ground inspections on the arena which include testing, construction services and special inspections on welds and concrete. The team will review the proposals and make a selection based upon qualifications and pricing. On the other projects there is an inspector on site daily with the team providing oversight to ensure

records are provided and reviewed. They are also putting quality control methods into place so that the project is successful and built per the engineer's design.

With no further public comment, Beutler made a motion to approve the July payment registers. Clare seconded the motion. Motion carried 3-0.

#### **Item 5 – Review of the July 2011 Expenditure Reports**

Steve Hubka stated that there are two reports before the Board, one contains the capital project expenditures and the other contains the operating budget expenditures. They reflect the same items that are shown in the payment registers discussed earlier. Later in the meeting there will be a public hearing on the 2011-2012 proposed operating budget.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the expenditure reports. Beutler seconded the motion. Motion carried 3-0.

#### **Item 6 – Report on the Recent \$100 Million JPA Financing Sold on August 9th**

Scott Keene reported that this financing was scheduled for sale on Tuesday August 9<sup>th</sup>. Everything was looking good with the affirmation of the JPA's AAA rating by Standard and Poor's and the AA1 rating by Moody's until Standard and Poor's announced they were downgrading US Government Treasury debt to AA+ on the Friday prior to sale. Although the municipal market was fairly light on the following Monday, there were some significant financings that were accomplished which gave an indication that the bond sale could proceed on Tuesday morning. There were six active bidders with Bank of America Merrill Lynch being the low bidder with a true interest cost of 4.26%. When combined with the two earlier financings that were completed in 2010, the average true interest cost is 3.74% which is well below the 5% that was estimated during the election.

This sale will almost complete the financing required for the arena. Keene expects that sometime in 2013, as the completion of the project nears, there will be one last financing in the \$25 million range related to the turn back tax. This is a relatively small piece compared to what has already been locked in. Keene thanked all of the members of the financing team as well as the Board for having the confidence to proceed ahead.

Snyder asked Keene to review the total percentage on the current bonds for the public. Keene stated that the first financing went to market in August 2010, and after the receipt of the subsidy from the federal government the net interest cost to the JPA was 3.24%. The second financing accomplished in December 2010, had a true interest cost of 3.75% and with this financing having a true interest cost of 4.26% the average is 3.74%. The differential on the \$300 million financing from the 5% projected to the 3.74% actual is equivalent to a savings of approximately \$86 million over the life of the bonds.

Keene pointed out that the downside is that the JPA has borrowed this money but isn't spending it that quickly. There is some cost to getting these financings done early because the reinvestment rate isn't approaching the 3.74% borrowing rate. The financial team has

determined, however, that just a 0.25% increase in interest rates would have cost enough in one year to make it better to borrow the \$100 million now than to wait.

Snyder asked for any comments from the public. No one came forward.

**Item 7 – Renewal of Public Officials Liability Insurance Coverage. The insurance coverage provided by Hiscox has been renewed for an annual premium of \$26,760.55, an increase of \$674.70**

Dan Marvin explained that this is a renewal of the Public Official's Liability policy. The first policy was purchased in the short year when the Joint Public Agency began. There is a line item in the operating budget to cover this cost.

Snyder noted that there is an increase of \$674 and asked if this type of increase is typical. Marvin advised that it is probably something that will be seen every year. \$30,000 has been budgeted for this policy, which will cover the increase.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to renew the Public Official's Liability coverage. Beutler seconded the motion. Motion carried 3-0.

**Item 8 -- Bill No. WH 11-60 Resolution approving an Agreement of Purchase and Sale and Leaseback between the West Haymarket Joint Public Agency and USPS providing for the JPA's purchase of USPS Parcel for its appraised fair market value (\$600,000) and the lease of the JPA Parcel to the USPS for nominal consideration. Motion to Amend #1 to adopt Substitute Agreement**

Rick Peo informed the Board that the City of Lincoln and Post Office currently have a Joint License Agreement in which the City parks on USPS property and USPS parks on property owned by the JPA. The West Haymarket redevelopment project requires the acquisition of the USPS parcel in order to open up R Street further west and also for redevelopment activities in the area. The Post Office would like to keep parking on the property owned by the JPA which is why a Leaseback agreement has been included. This resolution includes a Motion to Amend No. 1 in order to adopt a substitute agreement, as the agreement had to be updated to change the closing date and add the ground leasing language.

Snyder noted that it appeared the original paper work was completed in the 1990's. Peo indicated that the Joint License Agreement between the two agencies was completed in the early 2000's when the Iron Horse parking lot was constructed.

Snyder asked for any comments from the public. Jane Kinsey came forward and asked if the JPA was buying property from the Post Office or leasing it. Peo explained that the JPA is buying property from the Post Office and the Post Office will continue to lease the property from the JPA. The property that the JPA now owns had been owned by Burlington Northern. The property the JPA is buying is part of the Iron Horse parking lot. In order for the West Haymarket project to be developed, particularly the private redevelopment activities for festival space, the JPA needs to acquire this land. The JPA has to buy the land at fair market value which has been appraised by local real estate appraisers in Lincoln at \$600,000.

Clare noted that the average person won't notice any difference because the same people will be parking in the same location. The only difference will be that it allows for ingress and egress to the arena site for the contractors. Peo agreed. Snyder asked Dan Marvin if there have been any issues with ingress and egress to the site. Marvin stated that they are getting vehicles into the site through 8<sup>th</sup> Street and N Street in order to keep the truck traffic through the Haymarket at a minimum. This piece of the Iron Horse lot will be maintained as parking until other parking stalls have been created so that the Haymarket patrons are not inconvenienced.

Hearing no other comments, Beutler made a motion to approve Resolution WH 11-60. Clare seconded the motion. Clare then made a motion to approve Amendment No. 1. Beutler seconded the motion. Motion carried 3-0. The main motion was then voted on and carried 3-0.

**Item 9 -- Bill No. WH 11-64 Resolution approving the engagement of BKD, LLC for purposes of performing an audit of the West Haymarket JPA financial statements for the period ending August 31, 2011**

Steve Hubka stated that this is a four year contract with BKD to perform a financial audit of the JPA. The first year fees are \$15,000 and that has been included in the proposed operating budget. It is a traditional financial audit with reports on internal controls and compliance.

Clare asked Hubka to clarify what the internal control report and compliance report entail. Hubka explained that the internal control report will evaluate whether the internal control systems followed by the JPA in conducting financial affairs are strong and are what is typically seen to ensure financial compliance. The compliance report will look at and offer an opinion on the financial statements which is the most important thing.

Snyder asked if this is the same audit that was performed last year. Hubka acknowledged that it was, however, that audit only covered a small amount of transactions because it was for the short time period from June through August.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

**Item 10 -- Bill No. WH 11-65 Resolution approving Amendment No. 8 to adopt AIA Document E202-2008 (as amended) to incorporate a Building Information Modeling Protocol Exhibit as part of the September 1, 2010 Agreement between DLR Group, Inc. and the JPA.**

Paula Yancey explained that this resolution will clean up the contract and align the building information and systems protocols with the Mortenson and DLR agreement. It is a no cost addition to the contract that defines and clarifies the responsibilities between the two parties as they are sharing electronic documents and models.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 11 -- Bill No. WH 11-66 Resolution approving a Grant Contract between the JPA and Lancaster County for a grant in the amount of \$1,000,000.00 from Lancaster County Visitor Improvement Fund for various projects in the West Haymarket area.**

Dan Marvin gave the Board a brief history of the grant. In approximately 2007, then Senator Beutler made changes at the state level that allowed the Visitors Improvement Fund to expand from a 2% hotel occupancy tax to a 4% tax and allowed 1% of that increase to be allocated towards arena construction. After conversations with Lancaster County, they approved a \$3.5 million grant to make improvements in both the arena site and festival space to help promote tourism and travel to the City of Lincoln. This is the first of those payments and is in the amount of \$1 million. There is a contingency that an arena operator needs to be brought on board. SMG was selected as the arena operator after a Request for Proposals process and negotiations are currently occurring.

Snyder thanked Mayor Beutler for his work in this area for the City of Lincoln and other cities in Nebraska.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 12 -- Bill No. WH 11-67 Resolution approving a Consultant Agreement with Alfred Benesch and Company to provide Construction Observation and Testing Services for the Arena, Arena Parking Garage and Ramp Construction Sites.**

Paula Yancey stated that this resolution is to extend the agreement with Alfred Benesch for arena geotechnical services and includes the testing of pile installation and inspections. Benesch provided the original recommendation for soils and foundation and they will now follow through with testing of the installation and construction of the piles. This agreement includes all three phases and includes the arena, the garage and the pedestrian ramp piles. The total dollar value is \$166,144.50 and it is within the current budget.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

**Item 13 -- Bill No. WH 11-68 Resolution approving the adoption of the 2011-2012 JPA Operating Budget**

Steve Hubka announced that this item was advertized as a Public Hearing on the 2011-2012 Operating Budget and invited anyone with comments to come forward. Hubka explained that this budget is for the 2011-2012 fiscal year, which begins today. Aside from debt service, the Operating Budget went from \$501,000 to \$588,000 and includes three major changes. The first change is the addition of \$22,000 under personnel costs to pay for Public Works administrative support. The second change is the addition of \$50,000 in other contractual services which covers miscellaneous items that may come up. If that money is not needed, it won't be used. The third change is for the Public Officials Liability Insurance. That coverage was originally paid out of the short budget that went from June to August of 2010. In mid-August of this year, that insurance needed to be paid again even though it was not included in the budget. It is anticipated

that the payment for next year will fall in the 2011-2012 fiscal year. When Hubka reports on the 2010-2011 budget it will appear as an amount expended above what was originally budgeted due to the payment timing.

Hubka also explained that the JPA now has \$16.6 million in interest payments on the \$300 million bonds. The federal government is giving the JPA a \$3.9 million subsidy and \$10.9 million is budgeted to be paid out of occupation taxes. The JPA is also advancing the District Energy Corporation \$2 million. Approximately \$171,200 of that has already been paid and will show up as an unanticipated expenditure on the 2010-2011 budget. That money will come back but is being shown in this way because it is not a cost that is going to be capitalized by the JPA, it is strictly an advance and reimbursement

Hubka added that although the JPA is not technically required to comply with the Budget Act, he is doing everything he can to follow it. A legal notice was published last Saturday which was five days in advance of this meeting and the approved budget will be filed with the State Auditor's office later this month.

Snyder asked for any comments from the public. Jane Kinsey came forward and asked what the District Energy Corporation is. Marvin explained that District Energy heats and cools the public buildings that the City and County jointly maintain. Lincoln Electric operates it although District Energy is its own political subdivision. They also provide heating services for the state office building downtown and will provide heating and cooling for the new jail. At the time the JPA issued debt, there was cash on hand that wasn't needed at the moment. The JPA agreed to advance District Energy so that they could construct the building that will provide heating and cooling services to the arena and West Haymarket area. When District Energy issues debt later this fall they will repay what the JPA has advanced to them. Kinsey asked if this would affect rate payers and Martin replied no.

Judy Smith came forward and noted that the changes Hubka described add up to approximately \$102,000 which is more than the \$88,000 increase in the proposed budget. Marvin explained that there are also some reductions in the current budget. Last year some tables and computers were purchased so the office supply line item went from \$15,000 to \$250. There was data processing that had to be done for software to allow for the collection of the occupation taxes, so that line item will go from \$20,000 to about \$10,000. The Operating Budgets are posted year by year on the Haymarket website [www.haymarketnow.com](http://www.haymarketnow.com) if anyone would like to do more detailed comparisons. Smith then asked if the amount for administrative support is an annual salary or a partial salary. Marvin stated that it is for the time incurred for Melissa Ramos-Lammli to provide support to the West Haymarket JPA. Those costs were previously incurred on the capital side but it was not felt that was appropriate so it has been added to the Operating Budget.

Hearing no other comments, Beutler made a motion to approve the 2011-2012 Operating Budget. Clare seconded the motion. Motion carried 3-0.

**Item 14 -- Bill No. WH 11-69 Resolution accepting and approving the Construction Manager's Partial Guaranteed Maximum Price Proposal and further authorizing the Construction Manager to commence the Work described in the Partial Maximum Price Proposal ("Limited Notice to Proceed Work").**

Paula Yancey reported that this resolution is for approval of the Partial Guaranteed Maximum Proposal (PGMP). This is required by the Mortenson agreement and guarantees the portions of work that will be occurring from September 15, 2011 through January 2012 until such time as the final Guaranteed Maximum Price (GMP) is agreed to. The total of the PGMP is \$63,018,412 and includes piling and concrete work as well as the mill order for steel roofing materials. This process was also described in a Lincoln Journal Star article that ran on Monday. All items included in this PGMP fall within the current budget and construction estimates set for the arena and garage construction. Associated assumptions, clarifications and schedule are included in the Board's packet to support this proposal.

Clare asked Yancey to discuss the Midwest Steel contract. Yancey explained that they brought on Midwest Steel to assist through the design process of the major roof trusses and support steel for the building.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 15 -- Bill No. WH 11-70 Resolution to adopt a procedure for the delegation, review, and approval of change orders to JPA contracts for the provision of services.**

Dan Marvin informed the Board that this is something that has been under discussion for a couple of months. This process sets different levels of review and approval for change orders so that those items with minimal cost impact can be taken care of quickly to keep the project moving along. The first level will include smaller items ranging from \$0 to \$24,999 and will require approval from PC Sports. The second level ranges from \$25,000 to \$100,000 and will require approval from the Mayor which is similar to the City's change order process. The third level will encompass anything over \$100,000 and will require Board approval. At each level someone in the field will identify what the items are and staff will work to negotiate the cost. These will be disclosed publicly and will show up in a report to the Board just like the expenditure reports.

Clare inquired if this is similar to what is done on other projects and if it is possible for someone to try and get a \$100,000 change order through easier by breaking it out into four \$25,000 change orders. Yancey stated that it is a similar process and noted that most of the change orders fall within certain parameters and cannot be easily modified. In addition to Yancey, the engineers and architects will be reviewing every change order to make sure they are in concurrence.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 16 -- Bill No. WH 11-71 Resolution to approve Amendment No. 2 to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson Company amending the Property Insurance Provision in the General Conditions to allow the JPA to procure flood coverage with a sub-limit of \$50 Million in lieu of the total value of the entire Project.**

Dan Marvin informed the Board that he would like to discuss Item 17 prior to this item. A motion on this item would presume what the Board is going to decide on Item 17.

After reviewing Item 17, the Board returned discussion to this item. Peo stated the issue of terrorism insurance came up late so he did not have a chance to provide a written amendment. In order to conform what was previously approved, Peo suggested making a change to page one of Amendment No. 2 so that it would read, "Notwithstanding the foregoing, Owner may forgo purchase of terrorism coverage and may procure flood insurance coverage with a sublimit of \$25 million..." That change would make this amendment correspond to the coverage that the Board has authorized. Mortenson has already signed Amendment No. 2 and has agreed to the changes so Peo would type up a new page 1 and insert the new language. Line six of the resolution itself will need to be corrected changing \$50 million to \$25 million and adding, "and without terrorism insurance coverage."

Beutler moved the adoption of Bill WH 11-71 as the resolution has been changed and as Amendment No. 2 has been changed from the dais. Motion failed due to the lack of a second.

Claire advised that he is not comfortable making changes in this manner. Peo understood and explained that they did not intend to address the issue of terrorism coverage; however Mortenson indicated that it needed to be addressed within this contract. Marvin added that there is a relatively low threshold for terrorism insurance. It would not cover a disgruntled employee setting fire to the building because it has to be foreign terrorism and has to be certified by the Secretary of the Treasury. It is also not common practice for the City to procure terrorism insurance on projects.

Clare explained that he doesn't have a problem with the changes that are being made but doesn't think it is good policy for the Board to be agreeing to resolutions that are being penned in. He wants to ensure this is done right and suggested that the Board take a short break so the documents can be corrected.

The Board recessed at 4:45 and came back at 5:00. It was decided that this item would be deferred to the next meeting that will be held on September 16<sup>th</sup>.

**Item 17 -- Bill No. WH 11-72 Resolution authorizing AON Risk Solutions to bind the Builders Risk Insurance Coverage being offered by FM Global.**

Dan Marvin informed the Board that for two months negotiations have been ongoing to procure Builders Risk Insurance on behalf of the JPA. Marvin is recommending that the Board purchase a policy provided by FM Global which provides \$25 million flood insurance, \$10 million delay of opening insurance, coverage for tornado damage and other acts of God. The cost of this policy is \$232,539 with an associated fee of \$25,000 for procuring the policy.



Scott Scheidel with Aon explained that Builders Risk Insurance will cover construction of the arena from September 15, 2011 to September 15, 2013, or when it is put to its intended use. If the arena were to be occupied early it would have to be put under the City's property insurance at that time. It also has an automatic 30 day extension if construction were to go over. Extensions beyond that are available for an additional premium. After going to market, FM Global was selected because they were able to put up the most flood insurance while providing full limits on the other perils at the lowest cost.

Snyder asked why this item needed to be discussed prior to Item 16. Marvin explained that the Mortenson contract requires full insurance to be carried on the building which includes terrorism insurance. The cost difference in carrying full insurance versus adequate insurance was in the neighborhood of \$430,000. If the Board authorizes purchase of this policy, Item 16 will amend the contract with Mortenson to adjust the levels of insurance.

Snyder asked for any comments from the public. Jane Kinsey came forward and asked if there will be any kind of insurance to protect against shoddy workmanship. Marvin stated that there are professional risks and exposures from a legal perspective against shoddy workmanship. The full resources of the City would be utilized to make the contractors live up to the kind of workmanship that is expected. Scheidel noted that as part of the risk management process, the JPA requires insurance evidence from Mortenson, the design professionals as well as subcontractors working on the project. He further explained that when a home owner hires a contractor to work on their house, they require that the contractor be bonded and have insurance so if a claim is made against the contractor for shoddy workmanship there is collectable insurance. The contractors work would not be covered under a home owner's policy which is similar to what the Builders Risk Insurance is.

Kinsey stated that she is concerned about tax payers being stuck with the bill such as what happened with the Antelope Valley project. At this point all that has been published is that no one is certain who is responsible for the shoddy work. Beutler pointed out that all City projects consistently have checks and balances and insurance indemnifications. With respect to Antelope Valley specifically, the City has not paid anything for the repairs that need to be made. The City doesn't intend to pay anything for those repairs; they will be paid by the contractors and/or the designers.

Snyder asked for any further comments from the public. Hearing none, Beutler made a motion to adopt the resolution. Clare seconded the motion. Beutler then moved to amend the resolution to include only the basic FM Global Builders Risk policy and commission at a cost of \$257,539. Clare seconded the motion. Motion carried 3-0. The main motion was then voted on and carried 3-0.

### **Item 18 -- Set Next Meeting Date**

The next meeting will be held on Thursday September 16, 2011 (Room 112, City Council Chambers)

**Item 19 – Motion to Adjourn**

Clare made a motion to adjourn the meeting. Beutler seconded the motion. Motion carried 3-0. Meeting adjourned at 5:01 P.M.

**Prepared by: Melissa Ramos-Lammli, Public Works and Utilities**